

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DURAN IRVIN,)	
Plaintiff,)	
)	
v.)	C.A. No. 04-10218-MLW
)	
ANDREA CABRAL, et al.)	
Defendants.)	

MEMORANDUM AND ORDER

For the reasons stated below, plaintiff's Application to Proceed Without Prepayment of Fees is denied without prejudice to refileing with a copy of his certified prison account statement within forty-two (42) days of the date of this Memorandum and Order. The Clerk will be directed to (1) correct the docket and (2) send a copy of this Memorandum and Order to the authorities at the Suffolk County Jail and House of Correction.

BACKGROUND

On January 20, 2004 plaintiff Duran Irvin, now incarcerated at the Suffolk County House of Correction, submitted for filing his self-prepared, civil rights complaint against the following three defendants¹: (1) Andrea Cabral, Suffolk County Sheriff; (2) Marie Lockhart, Deputy

¹The complaint misspells Sheriff Cabral's name as Cabrawl and incorrectly identifies Marie Lockhart as Deputy of Operations (she is Deputy Superintendent) and Mary Ellen Mastrorilli as Deputy Superintendent (she is Superintendent).

Superintendent at the Suffolk County House of Correction; and (3) Mary Ellen Mastrorilli, Superintendent of the Suffolk County House of Correction. See Complaint, Docket No. 2.

Because the complaint was filed without payment of the filing fee or an Application to Proceed Without Prepayment of Fees, plaintiff was granted additional time to do so. See 2/20/04 Memorandum and Order (Docket No. 1). At that time, plaintiff was advised that, among other things, prisoners are required to pay the full amount of the filing fee pursuant to 28 U.S.C. § 1915(b)(1). Id.

On March 2, 2004, plaintiff filed an Application to Proceed Without Prepayment of Fees that was accompanied by two commissary slips. See Docket No. 3. Although the Application indicates that plaintiff has no source of income and no funds, each commissary slip lists a minimal commissary fund balance. Id.

DISCUSSION

Although plaintiff has submitted an Application to Proceed Without Prepayment of Fees as required under Section 1915(a)(1), he has not yet provided the required certified copy of his trust fund account statement at the Suffolk County Jail and House of Correction as required by Section

1915(a)(2). See 28 U.S.C. § 1915 (a)(1), (a)(2).²

To enable this Court to calculate the amount that plaintiff must initially pay pursuant to Section 1915(b)(1), a copy of this Memorandum and Order will be sent by the Clerk to the Treasurer's Office at the Suffolk County Jail and House of Correction so that a copy of plaintiff's account statement may be promptly prepared and forwarded to:

Honorable Mark L. Wolf
United States District Court
District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

The Clerk will also send a copy of this Memorandum and Order to plaintiff along with a copy of the prescribed Application To Proceed Without Prepayment of Fees and Affidavit.

ORDERS

Based upon the foregoing, it is hereby ORDERED

1. Plaintiff's Application to Proceed Without Prepayment of Fees (Docket No. 3) is denied without prejudice to prejudice to refiling with a copy of his certified

²If plaintiff submits a certified copy of his prison account statement, the Court will direct the appropriate prison official to withhold from plaintiff's prison account and pay to the Court an initial payment towards the \$150.00 filing fee. The appropriate prison official will also be directed to collect monthly payments from plaintiff's prison account on a continuing basis until such time as the \$150.00 statutory filing fee is paid in full. Id.

prison account statement within forty-two (42) days of the date of this Memorandum and Order.

2. If plaintiff wishes to proceed with this action, he shall file, within forty-two (42) days of the date of this Memorandum and Order, an Application to Proceed Without Prepayment of Fees accompanied by a certified copy of his institutional account statement. The Clerk shall send plaintiff an Application to Proceed Without Prepayment of Fees and Affidavit with this Order.
3. The Clerk shall send a copy of this Memorandum and Order to the Treasurer's Office at the Suffolk County Jail and House of Correction so that a copy of plaintiff's account statement may be promptly prepared and forwarded to:
Honorable Mark L. Wolf
United States District Court
District of Massachusetts
John Joseph Moakley Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210.
4. The Clerk shall correct the docket so that it lists the three defendants as follows: (1) Andrea Cabral, Suffolk County Sheriff; (2) Marie Lockhart, Deputy Superintendent at the Suffolk County House of Correction; and (3) Mary Ellen Mastrorilli, Superintendent at the Suffolk County House of Correction.

SO ORDERED.

Dated at Boston, Massachusetts, this 18th day of June, 2004.

/s/ Mark L. Wolf
MARK L. WOLF
UNITED STATES DISTRICT JUDGE